IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr.A.No.473 of 2000.

Date of Decision :5th October, 2007.

State of H.P. …Appellant.

Versus:

Brestwa and another. …Respondents

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for judgment?[1]

For the appellants: Mr.Ashok Chaudhary, Addl. Advocate General. .

For Respondents. Mr.Rajesh Raghuwansi, Advocate.

Sanjay Karol, J (Oral).

In terms of the present appeal, the judgment dated 28th December, 1999 passed by Sub Divisional Judicial Magistrate, Rampur Bushahr in Criminal Case No. 35-2 of 1998 titled as State of H.P. Vs. Brestwa and another has been assailed whereby the accused persons have been acquitted of the charged offence under Sections 323, 325 and 34 of the Indian Penal Code.

As per the case of the prosecution, on 16th April, 1998 at about 11 A.M. while Smt. Sewa Dassi was in her fields, the accused persons damaged and cut 16 apple trees

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

belonging to her. Upon asking them, accused No.1 gave a blow of 'Danda' on her right arm and accused No.2 caught hold of her and gave her beating. The matter was reported to the Police vide report Ext. PW-5/A and PW-5/B and based on the same F.I.R.No.63 of 1998 dated 18th April, 1998 (Ext.PW-4/A) was registered with Police Station, Jhakari under Sections 323, 325 and 34 I.P.C. Complainant was got medically examined and her M.L.C. report (Ext.PW-3/A) was obtained where the Doctor opined that she suffered grievous injuries.

After completing the investigation, the challan was presented in the Court for trial and the charges against the accused persons under Sections 323, 325 and 34 of the Indian Penal Code were framed. The accused persons pleaded not guilty and claimed trial.

The prosecution, in all examined five witnesses and after the trial the statements of the accused persons under Section 313 Cr.P.C. were also recorded.

The Court below, after examining the deposition of the witnesses acquitted the accused of the charged offence for the reason that the version of PW-1 did not inspire confidence, no independent witness was examined by the prosecution and that there was delay in lodging the F.I.R.

I have perused the material on record. PW-1 is the complainant and Tula Ram (PW-2) is the person who accompanied PW-1 to the Police Station to lodge the F.I.R. He is not an eye witness. Dr.Paras Ram is an official witness, Inspector Ram Rattan (PW-4) is the Officer who has carried out the investigation and Rajinder Kumar (PW-5) is a formal witness.

It has come on record through the version of PW-1, that her entire land holding stood sold by her father and she did not have any land of her own. Since the land where the trees were growing did not belong to her, the statement of the complainant that the accused persons had cut apple trees belonging to her stands falsified. Therefore, her testimony cannot be relied upon without any corroboration to prove the guilt of the accused persons. PW-2 is not an eye witness and has only stated that he had accompanied PW-1 to the Police Station. Dr.Paras Ram (PW-3) who examined PW-1 has testified that injury No.1 can be caused by falling on hard surface and injuries No.2 to 4 can be self inflicted. Importantly, PW-4 who has carried out the investigation has not taken into possession the damaged apple trees.

Since no independent witnesses have been associated by the Police or examined in the Court, in my view, it would not be safe to hold the accused persons guilty

of the charged offence on the sole testimony of PW-1 whose statement itself is contradicted and not trust worthy.

In my view, the court below has correctly appreciated the material on record while arriving at its conclusion. I see no reason to interfere with the acquittal of the accused. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

October 5, 2007(R)